



2022UT17

Ref: UTS/AP/21/0021

**DECISION NOTICE OF SHERIFF COLIN DUNIPACE,
JUDGE OF THE UPPER-TIER TRIBUNAL FOR SCOTLAND (GENERAL
REGULATORY CHAMBER)**

IN THE CASE OF

Fife Council, Fife House, North Street, Glenrothes, KY7 5LT
per Anderson Strathern LLP, 1 Rutland Court, Edinburgh, EH3 8EY

Appellant

- and -

Mr Christian Olliver, 18 Fowler Street, Cellardyke, Anstruther, KY10 3HW

Respondent

FtT case reference FP00004-2102

7 June 2022

Decision

1. The Upper Tribunal allows the Appeal and remits the matter back to the First-tier Tribunal.

Introduction



2. A parking attendant employed by Fife Council (hereinafter referred to as ‘the Council’) issued a Penalty Charge Notice numbered FP05602444 (hereinafter referred to as ‘the PCN’) to Mr Christian Olliver (hereinafter referred to as “the Respondent”) in relation to his motor vehicle registration number S636 JVP at 117.33 on 26 September 2020 at the Railway Car Park B, Leuchars. The PCN was issued in relation to an alleged parking contravention whereby the Respondent was said to have parked in a car park without clearly displaying a valid parking ticket (this being stated as constituting contravention ‘code 83’). There ensued unremarkable correspondence whereupon the Council wrote to the Respondent on 14 October 2020, referring to previous correspondence from him, and stating that having considered the circumstances surrounding the issuing of the PCN that they could find no grounds for its cancellation. The Council stated that the relevant legislation was legislation of strict liability, irrespective of the intentions of the vehicle owner. The Council further stated that the vehicle owner had been in breach of the Road Traffic Act 1991 when the vehicle was parked and that he was therefore liable for payment of the PCN. The Respondent wrote to the Council on 20 October 2020, stating that in his opinion that he was not in fact parked at the car park, but was simply visiting the train station in order to pick up some rail tickets, and had only left the motor vehicle for ten minutes.

3. The Council subsequently served a ‘Notice to Owner’ on the Respondent on 19 November 2020, and the Respondent replied, challenging the PCN, on 11 December 2020 indicating again that he considered that he had not in fact parked his car at the locus on the date in question and that he had only been visiting the station to collect pre-booked tickets. The Respondent re-iterated his view that he had only been away from his car for approximately 10 minutes. The Respondent requested that the Council afford him some good will in these difficult times and requested that on that basis that they cancel the PCN. The Respondent thereafter went on to repeat his position, namely that:

“I was visiting Leuchars train station to collect pre-paid rail tickets. The Car was left for a maximum of 10 minutes and was not, in fact, parked as such”

4. The Council subsequently responded to the Respondent on 19 January 2021 indicating that they did not accept the representations made. In particular the Council stated



that as the parking facility was clearly identified as a 'Pay and Display' car park that he was required to pay for his parking even if he was not in fact intending to travel on a train. The Respondent was advised that this letter was to be regarded as a Notice of Rejection in terms of Schedule 6 of the Road Traffic Act 1991, and that if he wished to appeal against this decision that he required to appeal to the Parking and Bus Lane Tribunal within 28 days.

5. The Respondent subsequently submitted an appeal against the imposition of the PCN to the Parking and Bus Lane Tribunal on 3 February 2021. The Respondent stated the following Grounds of Appeal:

- I do not know which ground of appeal is relevant
- The authority made a procedural error
- The Traffic Regulation Order was invalid

The Respondent also stated by way of explanation:

"I was visiting Leuchars train station to collect pre-paid rail tickets. The car was left for a maximum of 10 minutes and was not, in fact parked as such. I was not provided with correct information by Fife Council in order to make an appeal. I have not been given the opportunity to pay £30, as was originally requested, and no explanation has been given as to why, if my appeal was successful the sum to be paid is now £60."

6. Detailed representations were also submitted on behalf of the Council. The Summary of the position as stated by the Council was to the following effect:

"I would like to address the issues raised by the Appellant in his explanation of appeal as follows: "I was visiting Leuchars train station to collect pre-paid rail tickets. The car was left for a maximum of 10 minutes and was not, in fact, parked as such." The car park that the Appellant has used to collect his train tickets is clearly identified as a pay and display facility and, as shown in the evidence submitted by the Council, his car was parked adjacent to one of the entrance signs and he would also have passed repeater signs that say "Have you paid

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and displayed?". The Appellant admits that he left his car for a period of 10 minutes but claims that it was not parked, but the car was parked and unattended when it was checked by the Parking Attendant. Within this facility there are four spaces marked as "Drop Off Only" which allow up to 20 minutes to pick up or drop off passengers or, as in this case, to attend the ticket office. I am not aware of any legal definition for "parking" other than a judgement made by Lord Greene in Ashby v Tolhurst (1937) contained in the book "Words and Phrases legally defined". Lord Greene held that "Parking a car is leaving a car and, I should have thought, nothing else" and I am satisfied that the Appellant's vehicle was "parked". "I was not provided with the correct information by Fife Council in order to make an appeal!" This relates to the PIN code required by the Appellant to allow him to make an online appeal using the FOAM system. For some reason the PIN code shown on the copy of the NoR submitted by the Appellant to the Tribunal on 2nd February, 2021 is incorrect (&NPASP) and has not formulated to the one shown on Fife Council's copy of the NoR sent to the Cambridge address (81A116). I suspect that the system that we use to generate the letter sent to Cambridge would print the code correctly as per our evidence but the letter sent to the Appellant at the Anstruther address was printed at the Appeals Officers home address manually so may not have generated the correct PIN code but used the generic code which shows until the correct PIN code is generated by the system when it prints the letter. As confirmed by the messages on this FOAM case, as soon as the Appellant has raised this issue with the Tribunal staff the correct PIN code has been provided which has allowed the Appellant to submit his appeal online therefore I am satisfied that the matter was resolved and the appellant has not been prevented from making his appeal for independent adjudication. "I have not been given the opportunity to pay £30, as was originally requested, and no explanation has been given as to why, if my appeal is unsuccessful, the sum to be paid is now £60." I have responded to this in Evidence Tab 11 - Challenge Rejection. The Appellant has twice been given the opportunity to pay £30, the first being to pay the £30 rate within 14 days of the issue of the PCN, and the second being when Fife Council reset the case back to the discounted rate of £30 when we issued our challenge letter and gave a further 14 days to pay the reduced amount. A full explanation of the appeals process is given in our correspondence and it clearly states that the charge of £60 applies once a Notice to



Owner has been issued. I am satisfied that Fife Council's evidence confirms that the contravention occurred, that the PCN has been correctly served, and that there are no grounds to cancel this PCN."

7. The Respondent's Appeal was considered by the Legal Member of the Parking and Bus Lane Tribunal on 26 March 2021, at which time the appeal was upheld, the reasoning of the Legal Member being set out in the decision of that date. For the sake of completeness the terms of the decision were stated to be as follows:

1. The Appellant, Mr Christian Olliver, is appealing a Penalty Charge Notice ("PCN") issued by Fife Council (the "Council"). Mr Olliver has requested a decision without a hearing.

2. The PCN was issued on 26 September 2020 in respect of an alleged contravention that took place on the same day at 17:33 hours. It is alleged that Mr Olliver parked his vehicle (registration number S636 JVP) at the Railway Car Park B, Leuchars. The alleged contravention is parked in a car park without clearly displaying a valid parking ticket (contravention code 83).

3. In reaching my decision, I have considered the oral and documentary evidence provided. The fact that I have not referred to every document produced should not be taken to mean that I have not considered it.

4. The Council must establish the contravention on a balance of probabilities.

5. The British Parking Association publishes Standard PCN Codes which must be used

(https://www.britishparking.co.uk/write/Documents/Contravention_code_list_v6_7.pdf)

Contravention code 83 is: "Parked in a car park without clearly displaying a valid pay & display ticket or voucher or parking clock".

6. The Council has used a traffic contravention which is in the lists promulgated by British Parking Association and in relation to which a penalty charge, higher or lower, is prescribed under the scheme for differential penalties. The wording used on



this PCN not being one of the prescribed contraventions, no penalty charge can arise in relation to it”.

8. On 29 March 2021 the Council applied for a Review of the aforementioned decision of 26 March 2021, and a decision was made to refuse the Review by another Legal Member of the General Regulatory Chamber First-tier Tribunal on 4 May 2021.

9. The Council subsequently submitted an application for permission to appeal to the First-tier Tribunal in terms of Rule 18(2) of the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals Rules of Procedure 2010 (hereinafter referred to as “the Procedure Rules”) seeking permission to appeal against the aforementioned decision in terms of section 46(3) (a) of the Tribunals (Scotland) Act 2014. The request for permission to appeal was considered by another Legal Member of the General Regulatory Chamber of the First-tier Tribunal on 24 June 2021. This Legal Member made reference to the Grounds of Appeal as set out on behalf of the Council and considered that they raised arguable points of law. The First-tier Tribunal therefor accordingly granted permission to appeal to the Upper Tribunal on that date.

10. Given that permission to appeal has been granted by the First-tier Tribunal, the Council has now submitted an appeal in terms of section 46(1) of the Tribunals (Scotland) Act 2014 on Form UTS-1. In support of this appeal the Council has lodged the following documentation:

- a. Form UTS-1
- b. Legal Member’s decision
- c. Decision of First-tier Tribunal allowing Permission to Appeal

Grounds of Appeal

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11. The grounds of appeal as set out by the Council on the Form UTS-1 were as follows:
- (i) That the Tribunal did not apply the relevant (and correct) legislation;
 - (ii) That the Tribunal failed to have regard to relevant considerations, and took into account irrelevant considerations;
 - (iii) That the Tribunal failed to provide proper, adequate and intelligible reasons for the Decision.
12. The Grounds of Appeal are also set out more comprehensively in the Notice of Appeal which accompanies this Appeal. In particular there are six distinct Grounds of Appeal all as outlined below. For the purposes of the determination of this Appeal, the six appeal points raised by the Appellants are as follows:

Ground One

- a. The decision fails to identify and/or apply the correct legislation, namely the 1991 Act. Importantly the Decision fails to identify the requirements of a Penalty Charge Notice as provided for by section 66(3) of the 1991 Act.
- b. The Decision fails to properly assess whether the Notice met the requirements of section 66(3) of the 1991 Act. Any reasonable assessment would have concluded that it was not required under the relevant legislation to either rely on codes issued by the BPA or narrate those codes.
- c. In failing to identify *et seperatim* apply the correct legislation the Tribunal erred in law.

Ground Two

- a. The Tribunal erred in law by finding that PCN's (in Scotland) "must use" the Standard PCN codes issued by the BPA. The Tribunal fails to provide any legislative or common law basis for this assertion, or finding.
- b. The Tribunal imposed an absolute requirement which is not contained within the legislation in force in Scotland.



- c. The only legal test identified by the Tribunal is the burden of proof. It is respectfully submitted that the burden of proof is an entirely separate matter from the applicable law that the Tribunal required to apply.
- d. Accordingly in all of the circumstances the Tribunal failed to properly direct itself to the legal test to be applied and took into account an irrelevant consideration. In so doing the Tribunal erred in law.

Ground Three

- a. The Tribunal erred in failing to have regard to a relevant consideration. The Tribunal were aware that the BPA had provided a written response/submission dated 29 March 2021 for the purposes of the appeal. The BPA submission is produced herewith and referred to for its terms (Appendix three)
- b. The submission by the BPA identified that the BPA codes were published for the purposes of the 2004 Act. The 2004 Act is not in force in Scotland. Accordingly the Tribunal. The 2004 Act is not in force in Scotland. Accordingly the Tribunal erred in law in failing to take account a relevant consideration.

Ground Four

- a. *Esto* a BPA code required to be included on the Notice (which is denied), the Tribunal erred in failing to have regard to the terms of the Notice and whether the information relating to the parking contravention was fairly given and conveyed.
- b. There was no evidence that the appellant did not understand the Notice.
- c. The Notice identifies that the appellant “parked in a car park without clearly displaying a valid parking ticket”.
- d. The Tribunal did not consider whether vouchers or parking clocks were available in Fife, and therefore whether or not reference to such vouchers or clocks required to be included in any such notice. Similarly the Tribunal did not consider the effect of the absence of any such reference in the Notice.
- e. Accordingly in all the circumstances the Tribunal failed to take account the relevant consideration that the Notice was fairly given and properly understood by



the appellant, like any other reasonable person considering the terms of the Notice. In so doing the Tribunal erred in law.

Ground Five

- a. The reasons in the Notice are not proper, adequate or intelligible. Whilst this is the penultimate ground of appeal the grounds are not listed in any order of merit/strength as it is submitted that proper and adequate reasons are a cornerstone of both judicial and administrative decision making.
- b. The 2020 Regulations require the Tribunal to provide the following: (i) statement of facts, (ii) findings, and (iii) reasons. Accordingly it is mandatory that the Decision properly, adequately and intelligibly discusses and addresses the three independent requirements.
- c. It is respectfully submitted that the Decision falls far short of what is required. Ignoring the requirement for a statement of facts there is no meaningful attempt however brief to identify the findings that the Tribunal reached and the reasons for so doing.
- d. Accordingly by failing to comply with the requirements of the 2020 Regulations the Tribunal erred in law.

Ground Six

- a. This ground was included within ground five in the Application. Accordingly there is no attempt in this notice to attempt to advance grounds not included in the application. Rather it is submitted that Ground Six is a separate ground in its own right and that it is proper to distinguish it from Ground Five.
- b. The decision states that the Tribunal relied on the “oral evidence” and documentary evidence. There is no attempt to provide any findings or reasons on which documents the Tribunal preferred and why, including what weight (if any) was attached to those documents.
- c. Furthermore an informed reader, such as the appellant, is left in serious doubt as to what “oral evidence” was considered in circumstances where no hearing was



fixed. Accordingly it is submitted that the Tribunal has erred in law insofar as the Decision is unintelligible. In the absence of knowing what the “oral” evidence comprised and being given an opportunity to respond the appellant is substantially prejudiced.

- d. Accordingly the Tribunal erred in law for the reasons identified above at paras 26(b) and (c).

13. The Council invited the Upper Tribunal to find that the First-tier Tribunal had erred in law and allow the Appeal, and thereafter sought that the Upper Tribunal quash the decision of the First-tier Tribunal and thereafter re-make the decision, or alternatively to quash the original decision and thereafter remit the cause back to the First-tier Tribunal with such directions as the Upper Tribunal deemed fit.

14. The procedural history of this appeal, is as above narrated. Neither party has indicated that they wished a full oral hearing in relation to this matter. No further written representations have been received from the Respondent.

15. The procedural history of the issuing of the Penalty Charge Notice is as set out above. By way of summary the position as set out and determined by the Legal Member in the decision dated 26 March 2021 was to give effect to the British Parking Association (hereinafter “the BPA”) contraventions codes, holding that failure to fully apply the terms of these codes rendered any subsequent PCN making reference to them fundamentally invalid. Reference was made by the Legal Member to the section of the BPA website which contains the list of these contravention codes, together with their accompanying narratives. By not fully narrating the terms of the contravention in full the issuing of the PCN was said to be fundamentally flawed and as such was incapable of enforcement.

16. At the present time the BPA publishes Standard PCN Codes which can be used, and that having regard to their list of Codes, Contravention Code 83 (as utilised in the present case) states that it occurs if a vehicle is “Parked in a car park without clearly displaying a valid pay



& display ticket or voucher or parking clock”. In the present instance no mention was made in the narrative on the PCN to the potential use of vouchers or parking clocks.

17. The Legal Member thereafter went on to state that the Council had made reference to a traffic contravention which was contained in the lists promulgated by the BPA and in relation to which a penalty charge, higher or lower, was prescribed under the scheme for differential penalties. The Legal Member thereafter continued that the wording used on this PCN, given the aforementioned absence of reference to vouchers or parking clocks, could not be said to be one of the prescribed contraventions contained with the list of contravention codes, which meant that no penalty charge could thereafter arise in relation thereto. The PCN was therefore said to be fundamentally invalid.

18. In considering this matter I have also noted the terms of the relevant Traffic Regulation Order applicable to the car park, being The Fife Council (Off-Street Parking Places)(Consolidation) Order 2013, as amended by The Fife Council (Leuchars Railway Station Car Parks) Order 2017. For the purposes of this Appeal the relevant section of the foregoing Order are contained within Part 4, sections 8 – 14, which deal with the question of Metered Parking. Of particular significance in relation to these proceedings are the terms of sections Nine, Ten, Eleven and Twelve which state as follows:

Part 4 – Metered Parking

9. *(1) A parking charge will be payable for a vehicle left in any metered parking place described in Schedule 2 during the charging hours relating to that parking place.*
- (2) The charging hours relating to each metered parking place shall be as specified in columns 5 and 6 of Schedule 2.*
- (3) The charging periods for each metered parking place, for which payment of a parking charge must be made, shall be specified in column 7 of Schedule.*



(4) The parking charges in respect of the charging periods for each metered parking place shall be as specified in column 8 of Schedule 2.

(5) The parking charges payable in relation to any metered parking place may be varied from time to time by the Council.

10. *(1) On leaving a vehicle in a metered parking place during the charging hours the driver of the vehicle shall make payment of the appropriate parking charge by:*

(a) inserting in a parking meter relating to that parking place a coin or coins of the denominations listed on the parking meter as valid for use in that parking place to the value required to meet the parking charge and displaying on the vehicle in the manner provided in the following Article the ticket issued by the parking meter: or

(b) using the remote payment parking system (where available) to register such payment: or

(c) using any other method of payment as may be authorised by the Council and indicated by instructions on a parking meter relating to that parking place and displaying in the manner provided in the following Article any ticket issued by the parking meter.

(2) Where a driver has made payment through the remote payment parking system, an indication that payment of the parking charge has been made shall appear on a hand-held device.

11. *(1) Tickets shall be displayed on vehicles left in metered parking places as follows:*



(a) In the case of a vehicle fitted with a front windscreen the ticket shall be displayed facing forwards on the glass of such windscreen or on the side windows of the vehicle behind the glass so that the time shown on the front of said ticket is clearly visible to a person standing at the nearside of the vehicle.....

12. *(1) If at any time while a vehicle is left in a metered parking place during the charging hours no ticket is displayed on the vehicle in accordance with the provisions of the foregoing Article and no indication appears on a hand-held device that the parking charge has been paid, it shall be presumed unless the contrary is proved that the parking charge has not been duly paid in respect of that vehicle.*

(2) The date and time recorded on a ticket displayed on a vehicle left in a metered parking place shall be presumed, unless the contrary is proved, to be the date and time in respect of which the parking charge was paid.

(3) The expiry of the charging period for which the parking charge has been paid at a parking meter shall be indicated by the time indicated on a ticket displayed on the vehicle for which the charge has been paid.

(4) The period for which the parking charge has been paid at a parking meter shall be deemed to have expired when the time on the clock on the parking meter relating to the parking place in which the vehicle has been left exceeds the time indicated on the ticket displayed on said vehicle.

19. Further in determining this matter I have taken cognisance of the terms of the email correspondence received by the Council from the Membership Development Manager of the

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British Parking Association dated 29 March 2021, which email correspondence bears to be a response to previous correspondence. This email correspondence states as follows:

“The list of Contravention Codes published on the BPA website is for the Traffic Management Act 2004 contraventions - we will be making this clearer shortly. So far as I am aware, there is no MANDATED list for Road Traffic Act 1991 contraventions and there never has been.

In 1995 the UK Department of Transport published Circular 1/95 “A Guide to DPE outside London”. This has been superseded in England and Wales by Regulations associated with TMA 2004. It is still current in Scotland and is published on the Transport Scotland website. Annex 12 shows a list of RECOMMENDED Contravention Codes.

It is to be noted these are recommended and not mandated.”

20. From the terms of the foregoing correspondence it appears to be clear that it not a requirement, nor indeed an expectation of the BPA that these Codes be utilised in relation to alleged offences under the Road Traffic Act 1991, which remains the legislation applicable in Scotland. Accordingly the use of the list of Contravention Codes, with their supporting narratives, is at best recommended, and it appears to be apparent from the aforementioned correspondence that the list of codes published and referred to by the Legal Member is in fact designed to relate to contraventions of the Traffic Management Act 2004, an Act which at the present time has no application in Scotland.

Discussion

21. The Parking and Bus Lane jurisdiction was brought within the integrated structure of Scottish Tribunals within the General Regulatory Chamber of the First-tier Tribunal for Scotland as part of its rolling programme of reform on 1 April 2020. Prior to that date there was no statutory right to seek permission to appeal decisions of adjudicators to the Upper Tribunal for Scotland. On that date the Adjudicators of the Parking and Bus-Lane Tribunal for Scotland became Legal Members of the General Regulatory Chamber of the First-tier Tribunal



for Scotland. In the present application, the index contravention was alleged to have occurred on 4 December 2020 which follows the integration of the Parking and Bus Lane Tribunal into the General Regulatory Chamber. Accordingly, and given that the Appellant's appeal was considered by the Legal Member of the First-tier Tribunal and the determination was issued on 22 July 2021, there does exist a statutory right to seek permission to appeal to the Upper Tribunal for Scotland in relation to this matter.

22. The terms of section 46(1) the Tribunals (Scotland) Act 2014 ("the 2014 Act") provide that the Upper Tribunal for Scotland may only hear appeals in cases where Permission to Appeal has been granted either by the First-tier Tribunal or by the Upper Tribunal itself. Permission will only be granted in accordance with section 46(2) (b) of the 2014 Act if the Appellant has identified an arguable error on a point of law in the decision of the First-tier Tribunal which he wishes to appeal. It is noted that in the present appeal that Permission to Appeal has been granted by the First-tier Tribunal.

Conclusion

23. The Appellant has been granted Permission to Appeal to the Upper Tribunal in terms of section 46 (3) (a) of the 2014 Act. In being granted permission to appeal the Council have stated six distinct grounds of appeal. The Respondent has not submitted any further substantive representations.

24. As a starting point it is helpful to note that in determining this appeal that I should have regard to determining whether the original Tribunal has made:

(i) an error of general law, such as the content of the law applied;

(ii) an error in the application of the law to the facts;

(iii) making findings for which there is no evidence or which is inconsistent with the evidence and contradictory of it; and



(iv) a fundamental error in approach to the case: for example, by asking the wrong question, or by taking account of manifestly irrelevant considerations, or by arriving at a decision that no reasonable tribunal could properly reach (see *Advocate General for Scotland v Murray Group Holdings* 2016 SC 201 at paras 42 to 43).

25. By way of background it should be noted that in Scotland, the present parking regime enables local authorities to enforce their own parking policies using parking attendants employed by the Council or outsourced to a third party on behalf of a Council. These powers enable parking attendants to issue Penalty Charge Notices (PCNs) to motorists breaching parking controls in specific areas. Any local authority may apply to the Scottish Ministers for orders decriminalising certain parking offences within their area. Upon completion of their application, offences cease to be the responsibility of the police and instead become the responsibility of the local authority concerned. A local authority which operates a Decriminalised Parking Enforcement (DPE) regime employs parking attendants who place Penalty Charge Notices (PCNs) on vehicles contravening parking regulations. Fife Council is one of the Councils who participate in this scheme. Penalty charges are considered civil debts, and revenue generated accrues to the Local Authority to finance the enforcement and adjudication of the scheme. Any surpluses are used firstly to improve off-street parking facilities and secondly for general traffic management and public transport purposes. Motorists wishing to contest liability for a penalty charge may have representation to the local authority concerned and, if rejected may have grounds to appeal to independent adjudicators whose decision is final.

26. It is clear from the information provided that the car park in which the Respondent's vehicle was parked was one which was governed by the terms of The Fife Council On-Street Parking Places Consolidation Order 2013, as amended by The Fife Council (Leuchars Railway Station Car Parks) Order 2017, and I do not understand that any issue has been taken with that proposition. Accordingly, and having regard to the foregoing, it is apparent that by leaving his motor vehicle in the index car park that the Respondent was rendering himself liable to comply with the terms of aforementioned Order. Having considered the terms of the Order it would appear that, *ex facie*, that he was required to pay a parking charge all as



specified in Section 9 of the aforementioned Order, although in light of the explanation provided by the respondent I do not offer any definitive position in that regard, that being a matter for subsequent consideration. Upon leaving his vehicle the Respondent was required to make payment of the parking charge in one of three methods, namely:

- Inserting coins in the parking meter to meet the parking charge and thereafter displaying the ticket thereby issued by the parking meter; or
- Using a remote payment parking system; or
- Using any other method as may be authorised by the Council and indicated by instructions on the parking meter relating to that parking place and displaying any ticket issued by that parking meter.

27. It does not appear to be denied, and indeed it appears to be accepted by the Respondent, that no such payment was made by him in relation to the period during which he utilised the parking bay in the car park. It follows from that position therefore that no parking ticket was ever displayed by the Respondent.

28. In the present case, and having examined the photograph submitted of the relevant parking meter, it would appear that this parking meter envisages that the RingGo mobile App be available for use, that being a remote payment system as envisaged by section 10(1)(b) *supra*. No other methods of payment as perhaps envisaged by the terms of Section 10 above appear to have been authorised in relation to this particular parking bay. Specifically there appears to have been no mention to the possibility of payment by utilising a 'voucher or Parking Clock' as a means of payment of the parking charge. In any event I do not understand that the Respondent did in fact avail himself of any such means of payment.

29. For the purposes of this Appeal, I have taken the view that it was reasonable in these circumstances for the Parking Attendant to have concluded that the Respondent may therefore have breached the terms of the foregoing Order, and as such that he was entitled to issue a Penalty Charge Notice. Whilst I have noted that the Respondent has suggested that no



such breach occurred given that his definition of ‘parking’ did not cover the situation which found him attending at the car park to collect pre-booked train tickets, that particular position is not one which I require to consider at this juncture. That is a matter which may of course require to be addressed in due course, but at this stage I am required only to consider the initial validity of the issuing of the Penalty Charge Notice and the terms of its constitution.

30. In the present appeal the position of the Council is as stated at paragraphs 7 above. In determining this matter I have noted that the relevant primary legislation for the issuing of Penalty charge Notices is section 66(3) of the Road Traffic Act 1991 (hereinafter referred to as “the 1991 Act”) which provides as follows:

- (3) A penalty charge notice must state-*
- (a) the grounds on which the parking attendant believes that a penalty charge is payable with respect to the vehicle;*
 - (b) the amount of the penalty charge which is payable;*
 - (c) that the penalty charge must be paid before the end of the period of 28 days beginning with the date of the notice;*
 - (d) that if the penalty charge notice is paid before the end of the period of 14 days beginning with the date of the notice, the amount of the penalty charge will be reduced by the specified proportion;*
 - (e) that, if the penalty charge is not paid before the end of the 28 day period, a notice to owner may be served by the London authority on the person appearing to them to be the owner of the vehicle;*
 - (f) the address to which payment of the penalty charge must be sent.*

31. As pointed out in the Council’s submissions, and for the avoidance of doubt, the reference in this section to ‘London’ does not in any way restrict the application of the section to that city. It is accepted that this section has direct application to Scotland and I have seen no submission to suggest that it does not apply in the present circumstances. In determining this matter I have not applied any other legislation to the question of the



adequacy of the Penalty Charge Notice, and am satisfied that no other such legislation than the Road Traffic Act 1991 applies to the issuing of Penalty Charge Notices in Scotland.

32. In considering this Appeal I have also noted the Respondent has submitted no written submissions and I have determined this appeal on the basis of the submissions I have received from the Council.

33. In approaching this matter I have had regard to the terms of the written decision of the First-tier Tribunal as outlined above. In examining this decision I have noted that the Legal Member has indicated that consideration was paid to the “oral and documentary evidence provided”. Whilst it is not clear at this stage what oral evidence was considered by the Legal Member, suffice to say at this juncture that the Legal Member had the opportunity of considering all of the evidence which had been submitted by the parties, and was satisfied that a decision could be reached on the basis of that evidence. I note that the relevant section of the Legal Member’s decision is stated as having regard to the fact that:

“The Council has used a traffic contravention which is in the lists promulgated by British Parking Association and in relation to which a penalty charge, higher or lower, is prescribed under the scheme for differential penalties. The wording used on PCN not being one of the prescribed contraventions, no penalty charge can arise in relation to it”

34. It is apparent from the wording of the decision of the Legal Member, that he considered that the validity or otherwise of the Penalty Charge Notice was dependent upon its compliance with the lists of Contravention Codes promulgated by the BPA, and that it has been determined that any Penalty Charge Notice issued which did not so comply with the terms of these lists cannot be deemed to be valid.

35. In addressing this matter further it is important to refer to the initial statutory basis for the issuing of Penalty Charge Notices. As indicated in submissions of the Appellants the statutory basis for such notices is to be found in section 66(3) of the Road Traffic Act 1991,



the terms of which have been outlined at paragraph 28 above. It is apparent that this section of the 1991 Act sets out a number of requirements necessary to validly constitute a Penalty Charge Notice. The relevant section appears to be section 66(3) (a) which states the grounds on which the parking attendant believes that a penalty charge is payable with respect to the vehicle. This provision appears on the face of it to be fairly wide ranging, but significantly it makes no reference whatsoever to any prescribed categories or codes in respect which are said to necessarily apply. There is further specifically no reference to the application of the BPA standard Penalty Charge Notice Codes. This is perhaps not surprising, and indeed as mentioned above it is accepted by the BPA that there are no mandatory codes which apply to parking contraventions labelled in terms of the Road Traffic Act 1991.

36. Given that reference has been made in the terms of the decision of the Legal Member to the BPA, it may be worthwhile taking cognisance of the function and remit of this organisation, and its impact upon this Appeal. The BPA is a not-for-profit organisation, which is said to represent the parking and traffic management profession in the United Kingdom. Its corporate members include local government, commercial providers and parking system operators. At the present time it has in excess of 750 corporate members, including Fife Council. The organisation states that it is committed to encouraging and developing the highest standards of professional conduct and ethics within its membership. As part of its function it has issued a Code of Professional Conduct which they state set out the standards of conduct expected by those working in this field. It also states that all BPA members commit to this code when they join the Association. This code was developed by the BPA Board following consultation both within and outside the parking profession.

37. The BPA also issues a series of Contravention Codes, and reference was made by the Legal Member to the Standard PCN Codes version 6.7.7, which sets out a number of codes applicable to different parking contraventions. This document is dated Mar 2019. Whilst it is entirely understandable why the application of these codes may assist in the administration of parking enforcement, there appears to be no statutory basis for the compulsory adoption of these codes on Penalty Charge Notices in Scotland. It is also of significance that the list of contravention codes as specified relates only to England and Wales given that they were



specifically inserted into that jurisdiction by the Traffic Management Act 2004. As has been mentioned above, this 2004 legislation does not apply to Scotland where the Road Traffic Act 1991 remains in force to govern these contraventions. As also pointed out in the correspondence from the British Parking Association, there is no mandated list for Road Traffic Act 1991 contraventions and indeed there never has been one. For the avoidance of doubt I have noted that there does not appear to be any other statutory basis for the use of the BPA contravention codes in Scotland. As indicated in the foregoing correspondence their use appears to be ‘recommended and not mandated’, and I have approached this appeal on that basis.

38. Given that the use of contravention codes is simply recommended and not mandatory, I am unable to conclude that any failure of a Penalty Charge Notice issued to comply with such a voluntary code would otherwise render it invalid as suggested by the First-tier Tribunal. As such I now require to consider whether the Penalty Charge Notice as issued does comply with the terms of the Road Traffic Act 1991.

39. The requirements of s 66(3) of the Road Traffic Act 1991 are as set out above in paragraph 25 above. Accordingly I have considered the terms of the Penalty Charge Notice issued in relation to whether it fully complied with the terms of the foregoing section. As mentioned above a valid Penalty Charge Notice must state-

- (a) the grounds on which the parking attendant believes that a penalty charge is payable with respect to the vehicle;
- (b) the amount of the penalty charge which is payable;
- (c) that the penalty charge must be paid before the end of the period of 28 days beginning with the date of the notice;
- (d) that if the penalty charge notice is paid before the end of the period of 14 days beginning with the date of the notice, the amount of the penalty charge will be reduced by the specified proportion



40. Having examined the terms of Penalty Charge Notice Number FP05802444 issued on 26 September 2020, I have noted that it contains the following information, namely:

- The grounds on which the penalty charge notice is payable, namely that the vehicle was parked in a car park without clearly displaying a valid parking ticket. This is in contravention of section 10(1) and 11(1) of The Fife Council On-Street Parking Places Consolidation Order 2013.
- The Penalty Charge Notice also states the amount of the penalty charge in the sum of £60;
- Further the Penalty Charge Notice states that the penalty charge of £60 must be paid within 28 days of the date of the Notice; and
- That the penalty charge will be reduced by 50% to £30 if paid before the end of 14 days beginning with the date of the notice.

41. Accordingly it is apparent that the terms of the Penalty Charge Notice are compliant with the terms of the relevant legislation, namely section 66(3) of the Road Traffic Act 1991. It is also perhaps worthy of note that the heading of the Penalty Charge Notice also specifically makes reference to the Road Traffic Act 1991(as amended). It appears to be clear therefore that the Penalty Charge Notice has been issued in terms of that Act and not any further enactments such as the Traffic Management Act 2004. Accordingly I have concluded from the foregoing that there can be no question that any Penalty Charge Notice issued under the Road Traffic Act 1991 can ever be dependent upon any recommended contravention codes for its validity.

42. In these circumstances I am satisfied that the Penalty Charge Notice was validly issued and accordingly I uphold the appeal on the grounds stated by the Appellants.

43. In these circumstances I am also satisfied that there has been an error of law and as such the appeal should succeed, and the original decision of the Legal Member is quashed.

44. Having reached this decision, I have considered the appropriate disposal in terms of Section 47(2) of the 2014 Act. I am satisfied therefore that it would be appropriate to remit the case to the First-tier Tribunal to deal with the matter as they see fit.



Accordingly the appeal is allowed.

Notice to Parties

45. A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within **30 days** of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.

Sheriff Colin Dunipace

Sheriff of South Strathclyde Dumfries and Galloway at Hamilton